

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TRUSTEES OF THE OPERATING
ENGINEERS PENSIONS TRUST; TRUSTEES
OF THE OPERATING ENGINEERS HEALTH
AND WELFARE FUND; TRUSTEES OF THE
OPERATING ENGINEERS JOURNEYMAN
AND APPRENTICE TRAINING TRUST; AND
TRUSTEES OF THE OPERATING ENGINEERS
VACATION-HOLIDAY SAVINGS TRUST,

Plaintiff(s),

vs.

WESTERN EXPLOSIVES SYSTEMS
COMPANY, a Delaware corporation; JARED L.
FREDERICK, JR., an individual; and PAUL A.
FREDERICK, an individual,

Defendant(s).

Case No. 2:13-cv-00092-GMN-NJK

ORDER DENYING MOTION TO
COMPEL

(Docket No. 25)

Pending before the Court is a Motion to Compel, filed on August 11, 2014. Docket No. 25. For the reasons discussed below, the motion is hereby **DENIED** without prejudice.

The Court's initial inquiry regarding a motion to compel is whether the movant made adequate meet and confer efforts. Federal Rule of Civil Procedure 37(a)(1) requires that a motion to compel discovery "must include a certification that the movant has in good faith conferred or attempted to confer" with the non-responsive party. Similarly, Local Rule 26-7(b) provides that "[d]iscovery motions will not be considered unless a statement of the movant is attached thereto certifying that, after personal consultation and sincere effort to do so, the parties have not been able to resolve the matter without

1 Court action.”

2 The case law in this District is clear that “personal consultation” means the movant must
3 “personally engage in two-way communication with the nonresponding party to meaningfully discuss
4 each contested discovery dispute in a genuine effort to avoid judicial intervention.” *ShuffleMaster, Inc.*
5 *v. Progressive Games, Inc.*, 170 F.R.D. 166, 171-72 (D. Nev. 1996). This obligation “promote[s] a
6 frank exchange between counsel to resolve issues by agreement or to at least narrow and focus matters
7 in controversy before judicial resolution is sought.” *Nevada Power v. Monsanto*, 151 F.R.D. 118, 120
8 (D.Nev.1993). To meet this obligation, parties must “treat the informal negotiation process as a
9 substitute for, and not simply a formal prerequisite to, judicial review of discovery disputes.” *Id.* This
10 is done when the parties “present to each other the merits of their respective positions with the same
11 candor, specificity, and support during the informal negotiations as during the briefing of discovery
12 motions.” *Id.* “Only after all the cards have been laid on the table, and a party has meaningfully assessed
13 the relative strengths and weaknesses of its position in light of all available information, can there be
14 a ‘sincere effort’ to resolve the matter.” *Id.* To ensure that parties comply with these requirements,
15 movants must file certifications that “accurately and specifically convey to the court who, where, how,
16 and when the respective parties attempted to personally resolve the discovery dispute.” *ShuffleMaster*,
17 170 F.R.D. at 170.

18 The Court has reviewed the pending certification of counsel. Docket No. 25, Ring Decl. at
19 ¶¶ 6-7 and 12-14, Exh. 1. It appears from the certification that when the parties met on June 25, 2014,
20 for a meet and confer not all of the relevant information was available. *See Federal Deposit Insurance*
21 *Corp., v. Flamingo, LLC, et al.*, 2013 WL 2558219, 2 (D.Nev.) (“[A] party must ‘meaningfully assess
22 [] the relative strengths and weaknesses of its position in light of all available information.’” (quoting
23 *Nevada Power*, 151 F.R.D. 118, 120 (D.Nev.1993))). At the June 25, 2014, meeting the parties agreed
24 to allow the Defendants thirty days for the production of documents. The current motion is based in
25 large part on the circumstances that developed after the June 25, 2014, meeting. After that June 25,
26 2014, meeting, the certification appears to provide only a description of written communications
27 between counsel, which are not sufficient to satisfy the “personal consultation” requirement. *See*
28 *ShuffleMaster*, 170 F.R.D. at 172 (exchange of letters does not satisfy meet and confer requirements).

1 The parties, therefore, have not engaged in an adequate meet and confer for purposes of this motion.
2 Accordingly, the motion to compel is hereby **DENIED** without prejudice.

3 IT IS SO ORDERED.

4 DATED: August 12, 2014

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7 NANCY J. KOPPE
8 United States Magistrate Judge
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